

STATEMENT OF JEFFREY B. DIAMOND TO HOUSE WAYS AND MEANS SOCIAL  
SECURITY SUBCOMMITTEE

The Social Security Administration should adopt policies “encouraging work” and I appreciate the Committee holding hearings on this issue.

I have practiced Social Security Law for 37 years in New Mexico and Texas. I am a sustaining member of the National Organization of Social Security Claimant Representatives [NOSSCR], and I am a member of the New Mexico State Rehabilitation Council. I strongly believe that every person on Social Security Disability programs should have the opportunity to return to work. In the case of SSI, a person, particularly a head of household, cannot live on only \$710.00 per month.

It is a problem, however, is when an Administrative Law Judge of the Office of Disability Adjudication and Review is repeatedly allowed to misapply Federal law, for example, the case of Biri v. Apfel 4 F.Supp. 1276, 1279 (Kansas 1998) provides: “...an individual’s desire to work is not evidence that she can work, but in fact, makes the claimant’s claim more believable.”

In holding against a woman in a therapeutic psychiatric community for 6 years, the ALJ used as rationale: “...the claimant noted under the topic of “My Hopes and Dreams for how my life will be in 1-2 years” that she wanted, among other things, “dependable steady income to meet financial obligations” and “possibly attend school to study computers, then maybe a job.” From this statement, the ALJ improperly concluded “...the fact that the claimant has an intention to work reflects an **ability** [emphasis supplied] and intention to do so and is not consistent with the idea that she is permanently disabled.”

Such a proposition is against public policy by discouraging the physically or mentally [or both] disabled from applying for benefits to get the income, medical and vocational rehabilitation benefits they need to return to the work force on a sustained basis.

I am proud that I have hired disabled people to work in my law firm and given them accommodation and support to succeed in the work place. The most recently hired disabled individual is Ralph McGary and his story is retold in the attached article in Focus on Carlsbad.

Please prohibit Administrative Law Judges from using a desire to work against an applicant for disability benefits.